



# CITY OF SALEM PLANNING BOARD

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## **Decision**

### **Site Plan Review and Flood Hazard Overlay District Special Permit**

**9-11 Franklin Street (Map 26, Lot 375)**

October 31, 2019

Gerren, LLC  
c/o William F. Quinn, Esq.  
5 Rantoul Street  
Beverly, MA 01915

**RE: Site Plan Review and Flood Hazard Overlay District Special Permit Decision for 9-11 Franklin Street**

### **Procedural History**

1. An application for a Site Plan Review and Flood Hazard Overlay District Special Permit under Sections 9.5 and 8.1 of the City of Salem Zoning Ordinance was made by Gerren, LLC and filed with the Planning Board on June 19, 2019 (Site Plan Review Application) and June 25, 2019 (FHOD Special Permit Application).
2. The Planning Board of the City of Salem scheduled a public hearing for Thursday, July 11, 2019. No testimony was heard, and the meeting was continued to July 25, 2019.
3. The Planning Board of the City of Salem opened a public hearing for the Site Plan Review and Flood Hazard Overlay District Special Permit on Thursday, July 25, 2019. The hearing was continued to Thursday, September 5, 2019, no testimony was heard. The hearing was continued to Thursday, September 19, 2019 and continued again to Thursday, October 17, 2019.
4. The hearing was closed on Thursday, October 17, 2019.
5. The Site Plan Review and Flood Hazard Overlay District Special Permit application is accompanied by a plan set, entitled "Gerren, LLC, 9-11 Franklin Street," dated June 20, 2019. Also submitted were revisions to sheets C-4, C-5, and C-6 dated September 18, 2019 and sheets C-5 and C-6 dated October 15, 2019.
6. The plans and other submission material were reviewed by the Planning Board. Throughout its deliberations, the Planning Board has been mindful of the statements of the applicants and their representatives, and the comments of the general public, all as made at the public hearing.

## General Findings

The subject property is located at 9-11 Franklin Street (Map 26, Lot 375). The applicant proposes the reconstruction and enlargement of a commercial building destroyed by fire in 2017. The other existing light industrial/commercial building on the site will remain and access to the proposed building is provided through the existing curb cuts and parking area. Additional parking will be provided adjacent to the new building. A stormwater management system will be installed as well as new utility services to the proposed building. The reconstructed commercial building is 15,511 gross square feet and a portion of the site falls within the FEMA Flood Zone AE (Elevation 10.0).

## Specific Findings

The Planning Board, after a public hearing and review of submitted materials and testimony, hereby finds that the project meets the provisions of the City of Salem Zoning Ordinance, Sec. 8.1 Flood Hazard Overlay District Special Permit and Sec. 9.5 Site Plan Review as follows:

Pursuant to Section 8.1.2.2.(a) of the Salem Zoning Ordinance, the FHOD includes all special flood hazard areas within the City of Salem designated as Zone A, AE, or VE on the Essex County Flood Insurance Rate Map (FIRM) issued by FEMA. A portion of the site is within FEMA Flood Zone AE. Therefore, in considering approval of the Flood Hazard Overlay District Special Permit, the Planning Board makes the following findings:

- 1) The proposed use will comply in all respects to the uses and provisions of the underlying district in which the land is located.
  - a) The subject property is located in the Residential Two-Family (R2) and Business Neighborhood (B2) Zoning Districts. The Salem Board of Appeals issued a Special Permit for the property at 9-11 Franklin Street on May 29, 2019 per Section 3.3.2 *Nonconforming Uses* of the Salem Zoning Ordinance to change a nonconforming use (commercial and warehouse) to another nonconforming use (service industry, warehousing, light industrial, business and professional offices) that is no more detrimental to the neighborhood. They additionally issued a Special Permit per Section 3.3.3 *Nonconforming Structures* to reconstruct and enlarge a nonconforming structure. Both permits were issued with conditions. The project complies in all respects to these uses and provisions.
- 2) There are adequate convenience and safety of vehicular and pedestrian movement within the site and in relation to adjacent streets and property, particularly in the event of flooding of the lot(s) or adjacent lot(s) caused by either overspill from waterbodies or high runoff.
  - a) The new commercial building will be built above the flood elevation. In the event of a flood, the building will be accessible to pedestrians, as will portions of the parking lot. As described in the "Technical Report: Site Redevelopment Plans 9 & 11 Franklin Street," prepared by The Morin-Cameron Group, Inc. and dated June 20, 2019, there is no

measurable change in traffic generation for the proposed project. The current vehicular and pedestrian traffic patterns will be maintained.

- 3) Utilities, including gas, electricity, fuel, water and sewage disposal, shall be located and constructed so as to protect against breaking, leaking, short-circuiting, grounding or igniting or any other damage due to flooding.
  - a) All utilities, including but not limited to the electrical panel, gas service and hot water heaters will be installed above the 100-year flood elevation (elevation 10).
  - b) All Service connections will be in compliance with the current edition of the Massachusetts Building Code, 780 CMR State Board of Building Regulations Standard, Appendix G: Flood-Resistance Construction.
- 4) Where the proposed use will be located within a coastal high hazard area (Zone VE on the FEMA Flood Insurance Rate Maps), the Planning Board shall also find the following conditions to be fulfilled: New structures or substantial improvements shall be located landward of the reach of mean high tide. The support of new structures or substantial improvements shall not be, in whole or in part, by the use of fill.
  - a) There is no coastal high hazard area (Zone VE) on the subject property.

## **Decision**

In view of these findings, the Planning Board decided at a regularly scheduled meeting on October 17, 2019 by a vote of six (6) in favor, none (0) opposed to approve the proposed amendment subject to the following conditions:

### **1) Conformance with the Plan**

- a) Work shall conform to the plans entitled, Gerren, LLC, 9-11 Franklin Street,” Sheets A0, C-1, C-2, C-3, C-4, C-5, C-6, C-7, L1, A1, A2, A3, and A4 prepared by Pitman & Wardley Associates, LLC, The Morin-Cameron Group, and Radner Design Associates, Inc., dated June 20, 2019 and revised August 29, 2019, September 18, 2019, and October 15, 2019; and the “Technical Report, Site Redevelopment Plans, 9 & 11 Franklin Street,” prepared by The Morin Cameron Group, Inc and dated June 20, 2019.
- b) Revised Plans reflecting all conditions and incorporating by reference this decision must be submitted to and approved by the City Planner for consistency with this decision prior to the issuance of a foundation permit.

### **2) Amendments**

- a) Any amendment to the site plan shall be reviewed by the City Planner and if deemed necessary by the City Planner, shall be brought to the Planning Board. Any waiver of conditions contained within shall require the approval of the Planning Board.

**3) Transfer of Ownership**

- a) In the event of the transfer of the site as a whole, within five (5) days of such transfer, the Owner shall notify the Board in writing of the new owner's name and address. The terms, conditions, restrictions, and/or requirements of this decision shall be binding on the Owner and its successors and/or assigns.

**4) Landscaping**

- a) An as built landscaping plan accompanied with a letter from a Registered Professional Engineer or landscape architect certifying compliance of the landscaping with the approved plan shall be submitted to the City Planner prior to issuance of the Certificate of Occupancy.
- b) Maintenance of all landscaping on the site shall be the responsibility of the Applicant, its successors or assigns, and any tree or shrub that does not survive shall be replaced.

**5) Lighting**

- a) A final lighting plan shall be submitted to the City Electrician for review and approval prior to the issuance of a building permit.
- b) Light trespass onto adjacent parcels/rights of way shall be avoided as indicated on the photometric plan.

**6) Maintenance**

- a) Refuse removal, ground maintenance, and snow removal shall be the responsibility of the applicant. "Refuse removal" includes recycling, which shall be the responsibility of the owner, successors, or assigns. The owner shall provide adequate facilities to ensure all users are able to recycle their trash. Owner is to enter into a contract with a company of the owner's choice to arrange pick-up of recyclable material. A copy of this contract is to be submitted to the City Engineer.
- b) Winter snow in excess of snow storage areas on the site shall be removed off- site.

**7) Fire Department**

- a) All work shall comply with the requirements of the Salem Fire Department.

**8) Building Inspector**

- a) All work shall comply with the requirements of the Salem Building Inspector

**9) Board of Health**

- a) The owner shall comply with the following specific conditions issued by the Board of Health:

- b) The individual presenting the plan to the Board of Health must notify the Health Agent of the name, address, and telephone number of the project (site) manager who will be on site and directly responsible for the construction of the project.
- c) If a DEP tracking number is issued for this site under the Massachusetts Contingency Plan, no structure shall be constructed until the Licensed Site Professional responsible for the site meets the DEP standards for the proposed use.
- d) A copy of the Licensed Asbestos Inspector's Report must be sent to the Health Agent.
- e) A copy of the Demolition Notice sent to the DEP, Form BWPAO6, must be sent to the Health Agent.
- f) The developer shall adhere to a drainage plan as approved by the City Engineer.
- g) The developer shall employ a licensed pesticide applicator to exterminate the area prior to construction, demolition, and/or blasting and shall send a copy of the exterminator's invoice to the Health Agent.
- h) The developer shall maintain the area free from rodents throughout construction.
- i) The developer shall submit to the Health Agent a written plan for dust control and street sweeping which will occur during construction.
- j) The developer shall submit to the Health Agent a written plan for containment and removal of debris, vegetative waste, and unacceptable excavation material generated during demolition and/or construction.
- k) The Fire Department must approve the plan regarding access for fire fighting.
- l) Noise levels from the resultant establishment(s) generated by operations, including but not limited to refrigeration and heating, shall not increase the broadband sound level by more than 10 dB(A) above the ambient levels measured at the property line.
- m) The developer shall disclose in writing to the Health Agent the origin of any fill material needed for the project.
- n) The resultant establishment shall dispose of all waste materials resulting from its operation in an environmentally sound manner as described to the Board of Health.
- o) The developer shall notify the Health Agent when the project is complete for final inspection and confirmation that above conditions have been met.

#### **10) City Engineer & Utilities**

- a) All work shall comply with the requirements of the City Engineer.
- b) Prior to issuance of the Foundation Permit, the applicant shall identify the proposed location, dimensions, and screening of utilities, including: water, stormwater, sewer, drainage, drain inlets, drainage tanks, back flow preventers, manholes, hydrants, gas, electrical, telephone, wireless telecommunications facilities, HVAC-related mechanicals, transformers, switchgears, generators, intake, and exhaust features including: ventilation, stacks, fans, louvers, steam, and recycling and other waste disposal locations.

#### **11) Clerk of the Works**

- a) A Clerk of the Works shall be provided by the City, at the expense of the applicant, his successors or assigns, as it is deemed necessary by the City Planner. Notwithstanding the foregoing, the parties acknowledge the Project shall be subject to controlled construction, which requires oversight by a Registered Professional Civil Engineer. Accordingly, it is

the understanding of the Board, the City Planner and the Applicant, that the Clerk of the Works, is expected to oversee and review all civil/site improvements related to the Project, including, but not necessarily limited to:

- i) all utility cut and caps related the City's Demolition Permit;
  - ii) all new utility installations;
  - iii) any connections to, extension of, or improvements to publicly owned infrastructure both on the applicant's site or within the City's right of way and any on-site stormwater or wastewater systems;
  - iv) any new installations or modifications to existing pavement/sidewalk/curbing; and
  - v) any sedimentation and erosion control barriers
- b) The Clerk of the Works shall review and approve all proposed, or approved, changes to the original Planning Board decision.
  - c) It is also mutually understood that the expense associated with the Clerk of the Works shall be for a reasonable number of hours and at a customary rate of service.
  - d) The Clerk of the Works shall provide the applicant, the City Planner, and the City Engineer reports of inspections including the dates and times on site with all invoices.
  - e) The applicant shall submit a construction plan that includes a detailed sequence and schedule of all construction activities related to the Project to the City Planner for approval prior to starting work. The construction plan shall clearly detail the sequencing, schedule and duration of all construction activities related to the Clerk of the Works' purview. Once the construction plan is approved, it shall be used to create a Task Order for the Clerk of the Works. If changes to the schedule are necessary, the applicant shall notify the City Planner, the City Engineer, and the Clerk of the Works as soon as possible. If the Clerk of the Works must inspect the site due to lack of sufficient scheduling information and/or non-compliance with permits, approvals, regulations, and/or laws, the costs associated with this work will be in addition to the scope of work and cost established at initiation.
  - f) No work, including blasting, demolition, excavation, and grading shall start before an approved task order for the Clerk of the Works services has been agreed upon and approved by all parties.

## **12) Pre-Construction Conference**

- a) Prior to mobilizing equipment on site for the start of work, a pre-construction conference shall be scheduled with the City Planner, the City Engineer (or his designee), the Building Commissioner, the Health Agent, and any other departments that may be necessary. The Owner shall submit a construction schedule at the time of the pre-construction conference. The schedule shall include a description of how construction will be phased and staged and what the impacts will be to the sidewalks and roadways.

## **13) Construction Practices**

- a) All construction shall be carried out in accordance with the following conditions:

- i) All provisions in the City of Salem's Code of Ordinance, Chapter 22, Noise Control, shall be strictly adhered to.
- ii) All reasonable action shall be taken to minimize the negative effects of construction on abutters. Advance notice shall be provided to all abutters in writing at least 72 hours prior to commencement of demolition and construction of the project.
- iii) Drilling and blasting shall be limited to Monday-Friday between 8:00 AM until 5:00 PM. There shall be no drilling, blasting or rock hammering on Saturdays, Sundays, or holidays. Blasting shall be undertaken in accordance with all local and state regulations.
- iv) All construction will occur on site; no construction will occur or be staged within City right of way. Any deviation from this shall be approved by the Department of Planning & Community Development prior to construction.
- v) A construction traffic management plan and schedule shall be submitted to the Department of Planning & Community Development for review and approval prior to the issuance of a building permit.
- vi) Any roadways, driveways, sidewalks, or landscaping damaged during construction shall be restored to their original condition by the applicant.
- vii) All construction vehicles shall be cleaned prior to leaving the site so that they do not leave dirt and/or debris on surrounding roadways as they leave the site.
- viii) All construction shall be performed in accordance with the Rules and Regulations of the Planning Board, and in accordance with any and all rules, regulations and ordinances of the City of Salem.
- ix) All construction vehicles left overnight at the site, must be located completely on the site.
- x) All construction activities shall be in accordance with the "Salem Police Station Construction Management Plan".
- xi) All construction shall take place under the direction and supervision of a Licensed Site Professional in compliance with the rules and regulations of the Massachusetts Department of Environmental Protection.
- xii) The applicant shall promptly notify the Board of Health of any environmental condition encountered during construction that may adversely impact the abutters to the site.

#### **14) As-built Plans**

- a) As-built Plans, stamped by a Registered Professional Engineer, shall be reviewed and approved by the Clerk of the Works, then submitted to the Department of Planning and Community Development and Department of Public Services prior to the issuance of the Certificate of Occupancy. As-built plans shall identify 1) the number, location, depth, size and materials of all buried utilities and 2) locations and rim and invert elevations of all manholes and structures.
- b) The As-Built plans shall be submitted to the City Engineer in an electronic file format suitable for the City's use and approved by the City Engineer, prior to the issuance of the Certificate of Occupancy.
- c) A completed tie card, a blank copy (available at the Engineering Department) and a certification signed and stamped by the design engineer, stating that the work was

completed in substantial compliance with the design drawing must be submitted to the City Engineer prior to the issuance of the Certificate of Occupancy; as well as, any subsequent requirements by the City Engineer.

#### **15) Violations**

- a) Violations of any condition contained herein shall result in revocation of this permit by the Planning Board, unless the violation of such condition is waived by a majority vote of the Planning Board.

#### **Record of Vote**

The following members of the Planning Board vote to grant Site Plan Review and Flood Hazard Overlay District Special Permit subject to the above-stated terms and conditions: Chair Ben Anderson, Bill Grisct, Carole Hamilton, Kirt Rieder, Helen Sides, and Matt Venio.

None of the members of the Planning Board are in opposition to the granting of a Site Plan Review and Flood Hazard Overlay District Special Permit.

I hereby certify that a copy of this decision and plans has been filed with the City Clerk and copies are on file with the Planning Board. The Special Permit shall not take effect until a copy of this decision bearing the certification of the City Clerk that twenty (20) days have elapsed and no appeal has been filed or that if such appeal has been filed, and it has been dismissed or denied, is recorded in the Essex South Registry of Deeds and is indexed under the name of the owner of record is recorded on the owner's Certificate of Title. The owner or applicant, his successors or assigns, shall pay the fee for recording or registering.



Ben J. Anderson  
Chairman